IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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FAO NO. 363 of 2002.
Date of Decision: August 31, 2007.

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Nirmala Devi and others Versus Union of India.

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri Maharaj Kumar, Advocate, for the appellants.

Mrs. Daya Chaudhary, Sr. Assistant Solicitor General
for Union of India, with
Shri Bir Bhan Singla, Advocate.

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R.S.Madan, J

By filing this appeal, the appellants have challenged the order dated April 30,2001 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, whereby the claim petition filed for the grant of compensation on account of the death of Bijender Singh in an untoward incident, alleged to have occurred on 29.2.1996, has been rejected.

In brief the facts of the case are that on 29.2.1996, while he was on duty at the Railway Station being member of the Railway Protection Force, at Ambala met with an accident at the railway track and was cut into pieces by the Goods Train, and died at the spot. The applicants are the widow, and minor sons of the deceased.

Upon notice the claim petition was contested by the respondents alleging that the the accident in question did not fall within the ambit of Section 123(c) of the Railways Act (hereinafter to be referred to as the “Act”, because the deceased was run over at the Railway Station, Ambala Cantonment, Ambala by a Goods Train and as such the claim

petition was not maintainable. Further it is alleged that the claim petition was barred by time and was liable to be dismissed on this ground alone.

The learned Tribunal after going through the documents placed on the record and hearing the learned counsel for the parties, dismissed the claim petition filed by the appellants.

Feeling dis-satisfied with the order dated April 30, 2001, the appellants as stated above have preferred this appeal.

I have heard the learned counsel for the appellants and have gone through the record.

The learned counsel for the appellants contended that the Railway Tribunal has erred in rejecting the claim of the appellants, despite the fact that the deceased died at the spot while crossing the railway lines and got engulfed with the Goods train. He submitted that it was admitted by the respondents that the deceased was a serving personnel in the Railway Protection Force and was posted at Ambala Cantt. The learned counsel for the appellants in support of his contention that the Railway Claims Tribunal has erred in rejecting the claim petition placed reliance on various judgments of the High Courts to strengthen his submissions for the grant of compensation to the deceased on account of death suffered by way of accident while he was on duty. In support of his contention he relied upon **Union of India** Vs. **Aleykutty Devassia- 1998 ACJ 1195**; **Minu Mai Devi** Vs. **Union of India** 2002 ACJ 118 Gauhati; **D.Srinivas** Vs. **Union of India** 2000 ACJ 889; **Union of India and another** Vs. **Urmil Gupta and others** 2001 ACJ 416 (P&H) and **Parikhita Behera and another** Vs. **Divisional Railway Manager, South Eastern Railway and others**- 1998 ACJ 1019.

The judgments which have been cited by the learned counsel for the appellants in support of his submissions are mostly on the point of death of a passenger while crossing the unmanned railway crossing or

death of a passenger who was travelling without ticket and a case of a murder of a passenger while he was travelling in the train.

On the other hand, the learned counsel for the respondents i.e. Union of India controverting the submissions of the learned counsel for the appellants, submitted that the deceased was not travelling in the train but while he was on duty at the platform, he tried to cross the railway tracks without caring for the incoming Goods Train, as a result of which he met with the accident and died at the spot. she further stated that being employee of the Railway Protecting Force, Ambala, the appellants are entitled to get the family pension from the department concerned.

For the purpose of deciding the controversy involved in the instant appeal, a brief reference to the relevant provisions is necessary, which reads as under:-

> 123(c)- “Untoward Incident”-means (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or
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> (ii) the making of a violent attack or the commission of robbery or dacoity' or
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> (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
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> (2) the accidental falling of any passenger from a train carrying passengers.

Thus, from the bare reading of the provisions of the aforesaid section it is clear that the case of the deceased does not fall within the ambit of any of the conditions mentioned therein. Unequivocally the Act incorporates the concept of liability of the railway administration for death and/or injury to passengers due to any untoward incident while travelling in the train. Section 123(c) inter alia provides the making of a violent attack or the commission of robber or dacoity as an “untoward incident”. Thus, the

case of the appellants was required to be considered on the basis of res ipsa loquitur (thing speaks for itself) rather than on narrow technicalities based on the provisions of the Railways Act.

Thus the most crucial point is " falling of any passenger from a train carrying passengers". It is the case of the appellants themselves that the deceased was member of the Railway Protection Force and on the fateful day was on duty at the Platform. It is further the case of the appellant that while the deceased was crossing the track, he got a slip from the heap of earth and got engulfed with the Goods Train and died at the spot. It is the proven fact that the deceased met with the accident while he was crossing the railway tracks on which the goods train was moving. According to the Railway Act, even crossing of railway lines is an offence. Thus, it cannot be said that the death of the deceased was due to fall from the passenger train.

In the given facts and circumstances of the case that the deceased suffered death while on duty as a member of the Railway Protection Force and while crossing the tracks he got slipped from the heap of earth and got engulfed with the Goods Train and died at the spot. According to the Railway Act even the crossing of railway tracks is an offence. It is not a case of a passenger falling from the train in which he was travelling so as to attract the provisions of Section 123(c) defined as untoward incident.

As a colliery of my above discussion, I see no infirmity in the impugned order which is under challenge before this Court. Thus the present appeal being devoid of merit, is hereby dismissed.

(R.S.Madan)
Judge

August 31, 2007.

Malik